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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: April 29, 2011

Title

Task Force for Criminal Justice Collaboration
on Mental Health Issues: Final Report

Agenda Item Type

Action Required

Effective Date

April 29, 2011

Rules, Forms, Standards, or Statutes Affected

None

Date of Report

March 22, 2011

Recommended by

Task Force for Criminal Justice Collaboration
on Mental Health Issues
Hon. Brad R. Hill, Chair

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Executive Summary

The Judicial Council's Task Force for Criminal Justice Collaboration on Mental Health Issues recommends that the Judicial Council receive its final report and recommendations and direct the Administrative Director of the Courts to prepare an implementation plan. When approved, the recommendations will provide a framework for improving practices and procedures in cases involving both adult and juvenile offenders with mental illness, for ensuring the fair and expeditious administration of justice for offenders with mental illness, and for promoting improved access to treatment for litigants with mental illness both in the community and in the criminal justice system.

Recommendation

The Task Force for Criminal Justice Collaboration on Mental Health Issues recommends that the Judicial Council, effective April 29, 2011:

1. Receive the final report and recommendations of the Task Force for Criminal Justice Collaboration on Mental Health Issues;
2. Request the Chief Justice to appoint an implementation working group no later than December 2011; and
3. Direct an implementation working group to develop a plan, no later than April 2012, that includes key milestones for implementing recommendations and identifies recommendations under Judicial Council purview, as well as potential branch implementation activities.

The task force's final recommendations can be found in the *Task Force for Criminal Justice Collaboration on Mental Health Issues: Final Report* (see Attachment A).

Previous Council Action

This is the initial submission of the task force report and recommendations to the Judicial Council. There has been no previous action by the council. The current task force expires June 30, 2011.

Rationale for Recommendation

The Task Force for Criminal Justice Collaboration on Mental Health Issues, chaired by Presiding Justice Brad R. Hill of the Court of Appeal, Fifth Appellate District, was appointed in February 2008. The task force was one of seven projects initiated nationwide with funding and technical assistance support from the national Criminal Justice/Mental Health Consensus Project of the Council of State Governments (CSG). The Consensus Project is designed to encourage state and local leaders to address the complex and serious problems arising out of the overrepresentation of persons with mental illness in the criminal justice system. The creation of the task force supports the Conference of Chief Justices (COCJ) *Resolution 11: In Support of the Judicial Criminal Justice/Mental Health Leadership Initiative*, adopted in January 2006.

The task force was specifically charged to:

- Identify needs for court-related programs and services that address offenders with mental illness in adult and juvenile courts;
- Promote interbranch and interagency collaboration at state and local levels to identify barriers and create opportunities to improve case processing and outcomes;
- Disseminate locally generated best practices to trial courts and partner agencies;
- Identify methods for evaluating the long-term effectiveness of mental health programs in the courts and for identifying best or promising practices that improve case processing and outcomes;
- Provide policymakers with recommendations to improve services and case processing for cases involving offenders with mental illness;

- Advise the Judicial Council and its advisory committees of funding needs and potential resources;
- Provide access to education and outreach programs designed to enhance the effectiveness of case processing and outcomes for cases that involve offenders with mental illness in adult and juvenile courts; and
- Serve as a clearinghouse for ideas, questions, and comments generated in the course of preparing recommendations.

Task force membership reflects the key partnerships required to more effectively address systemic responses to offenders with mental illness. Individual members include judicial officers, legislators, directors of the state departments of alcohol and drug programs, mental health, and corrections, as well as other key criminal justice and mental health partners representing state and local interests. During their terms, members have attended eight meetings of the full task force, one educational session on voluntary and involuntary treatment issues in California, one educational session on juvenile competency issues, over 40 subcommittee meetings, two meetings of subcommittee chairs, and two public hearings to receive comment on the draft recommendations and report.

The formation of the task force was timely. California's criminal justice system is becoming increasingly responsible for large numbers of individuals with mental illness. People with mental illness are more likely to be arrested than those in the general population for similar offenses and many enter the criminal justice system as a direct result of their unmanaged illness. Although only 5.7 percent of the general population has a serious mental illness, approximately 18.5 percent of arraigned defendants and 23 percent of California prison inmates have a serious mental illness. The criminal justice system is ill equipped to meet the needs of this population and cannot adequately provide the treatment people with serious mental illness need.

A number of complications arise when persons with mental illness enter the criminal court system, including delays in court proceedings as a result of an incompetent-to-stand-trial finding. Such delays often result in long jail stays while individuals await treatment at state hospitals. While in jail or prison the mental state of inmates often declines as the experience of being incarcerated can exacerbate psychiatric symptoms. According to the Council of State Governments, persons with mental illness spend more time in jail or prison than individuals who received similar convictions but do not have a mental illness. Without adequate community supports, this population, with recidivism rates sometimes double that of offenders without mental illness, is more likely to return to jail or prison soon after release.

The task force studied the myriad of issues related to responding to offenders with mental illness along the criminal justice continuum including from early intervention through reentry into the community post-incarceration. Members heard from representatives of model programs and from experts in mental health treatment and the law. The task force also heard from the public and from family members of individuals with mental illness that have been involved in the criminal

justice system. After careful study, task force members developed 137 recommendations that focus primarily in the following seven areas:

- Community-based services and early intervention strategies that reduce the number of individuals with mental illness who enter the criminal justice system;
- Court responses that enhance case-processing practices for cases of defendants with mental illness and reduce recidivism for this population;
- Policies and procedures of correctional facilities that ensure appropriate mental health treatment for inmates with mental illness;
- Community supervision strategies that support mental health treatment goals and aim to reduce the recidivism rates of probationers and parolees with mental illness;
- Practices that prepare incarcerated individuals with mental illness for successful reintegration into the community;
- Practices that improve outcomes for juveniles who are involved in the delinquency court system; and
- Education, training, and research initiatives that support the improvement of criminal justice responses to people with mental illness.

The task force formulated these recommendations during a time of fiscal crisis and uncertainty. In addition to the overall reduction in state and local revenues resulting from the economic turndown, the state is also in the process of realigning service delivery responsibilities and shifting funding resources from the state to local jurisdictions. At the time this report is going forward to the Judicial Council, much is still unknown about the future of the state's mental health and criminal justice delivery systems. In addition to maintaining the existing partnerships that have been developed during the course of the work done by the Task Force for Criminal Justice Collaboration on Mental Health Issues, there is in all likelihood, a need to expand and create new partnerships with local jurisdictions as the work of an implementation working group begins.

The task force carefully considered the economic impact of each recommendation on already stressed local and state budgets and on systems that will undoubtedly be affected by realignment activities. It is anticipated that implementation of some of the recommendations may be delayed as the judicial branch and its criminal justice and mental health partners deal with the current fiscal challenges. While some of the recommendations put forth by the task force will require additional funding and resources, many of the recommendations are cost-neutral and some are associated with cost savings as they focus on ways to maintain offenders with mental illness in the community through connections to treatment services. These recommendations can be promptly and easily implemented. Although the immediate implementation of all recommendations may not be possible in the current fiscal environment, the task force was cognizant of the importance of creating aspirational recommendations that serve as a blueprint for the best possible response to criminally involved persons with mental illness. Task force members anticipate that improving responses for persons with mental illness in the criminal

justice system will result in both short- and long-term cost savings, greater efficiency, lower recidivism rates, and improved personal and public safety outcomes.

Some of the recommendations included in the report are outside of the direct purview of the Judicial Council; however, the task force recognized that only a systemic approach to this issue would lead to the changes needed to improve outcomes for offenders with mental illness. Under judicial leadership and with the necessary criminal justice and mental health partners represented on the task force, recommendations were created that span the entire criminal justice continuum. If the Judicial Council chooses to direct a working group to develop an implementation plan, issues related to purview and a plan to address such issues will be presented to the council. Through the work of the implementation working group, the council and the courts will continue to play a key role in building and enhancing the key partnerships necessary to fully address issues related to the mentally ill in the criminal justice system.

Comments, Alternatives Considered, and Policy Implications

The draft recommendations were circulated widely for public comment for a nine-week period in the summer of 2010. The report was sent to criminal justice and mental health partners throughout the state, as well as treatment professionals, mental health consumer and family advocacy groups, and relevant Judicial Council advisory groups. In addition, the task force held public hearings in Sacramento and Los Angeles to solicit feedback on the draft recommendations. In total, 874 comments were submitted by 66 commentators, representing both individuals and organizations. Key criminal justice and mental health partners submitted comments, including the California Association of Public Administrators, Public Guardians, and Public Conservators; California Mental Health Directors Association; California State Association of Counties; Chief Probation Officers of California; and Mental Health Services Oversight and Accountability Commission, as well as county sheriffs, county mental health departments, mental health clients, family members, advocacy organizations, judges, attorneys, and court staff. A chart summarizing the comments and the committee's responses is attached at pages 28–279.

Commentators largely expressed support for the report and recommendations. Of 874 comments, the majority expressed agreement with a recommendation or agreement with minor modifications. Only 35 were in disagreement with specific recommendations. The task force carefully reviewed and addressed each submitted comment. Based on public feedback, several modifications were made to the task force recommendations and other report text.

For most of the “agree with modifications” responses, suggested modifications were minor and did not change the intent of the recommendation. Many commentators wanted named agencies or services added to recommendations or qualifying or clarifying information added. In many cases recommendations were revised or text was added to the report to reflect the commentator's suggestions.

Several commentators expressed concern about the potential costs associated with the implementation of recommendations and noted that recommendations should not become unfunded mandates. As indicated previously, the task force discussed extensively the fiscal implications of the recommendations. The task force acknowledges that some of the recommendations may require stabilized funding or additional funding. Additional text regarding the current fiscal climate of the state and the costs associated with implementing recommendations was added to the report. In addition, it was also noted that some of the recommendations can be implemented at little or no additional cost through local collaborations, and that some recommendations promote practices associated with cost savings in the long term.

Some commentators asked for additional review and analysis before the task force proposed recommendations regarding the coordination of criminal and conservatorship proceedings. Some commentators expressed concern about a single judge presiding over both the criminal and conservatorship proceedings of a defendant. Others expressed concern about granting judges the authority to order a conservatorship evaluation and the filing of a petition. Based on these comments, the task force made modifications to recommendations regarding the coordination of criminal and conservatorships proceedings to clarify that a judge would not preside over both types of proceedings unless all parties agree.

In response to other feedback received during the public comment period, six additional recommendations were added to the final report as well as three additional examples of local programs. Other than these noted additions and changes, the final report is not substantively different from the draft report circulated for public comment. However, some of the recommendations were renumbered in the process of making these additions and changes. A conversion chart that shows the old (as in the draft report) and new (as in the final report) recommendation numbers, as well as the language of the recommendations as in the draft report, is attached to this report at pages 9–27.

In summary, each recommendation was the result of much study and discussion by the task force and its leadership. Each set of recommendations is preceded by a problem overview section to provide an understanding of the problems and issues the recommendations are designed to address. Recommendations include many proposals that may necessitate further study and review, research and evaluation, possible changes in legislation or rules of court, or preparation of educational and training materials for the courts, law schools, and mental health and criminal justice partners. Some of these recommendations may require changes in the culture and practices of the courts and criminal justice and mental health partner agencies. The ultimate goal of the task force was to address ways to improve outcomes and reduce recidivism rates for offenders with mental illness while being mindful of cost and public safety considerations.

Implementation Requirements, Costs, and Operational Impacts

Receiving the report has no cost consequence. Approving specific recommendations at a later date may have consequences and that will be addressed by an implementation working group. Future implementation plans will identify the steps needed to put into practice the

recommendations contained in this report. At that time, implementation requirements and costs and operational impacts will be addressed in future reports brought forward for council action. As stated earlier, many of the recommendations may actually result in cost savings as their goal is to reduce recidivism and therefore reduce costs associated with arrests, bookings, court appearances, and time spent in jail and prison.

Relevant Strategic Plan Goals and Operational Plan Objectives

The following Judicial Council strategic plan goals are addressed by the recommendations of the Task Force for Criminal Justice Collaboration on Mental Health Issues:

- *Goal I, Access, Fairness, and Diversity:* Throughout the report, there are recommendations related to facilitating access to and understanding of court-connected programs and services, with a strong emphasis on ensuring that such services and programs are expanded to better and more comprehensively serve individuals with mental illness who may currently lack access to a variety of community-based, culturally sensitive mental health services.
- *Goal III, Modernization of Management and Administration:* Implementation of these recommendations, particularly those related to research and evidence-based practices will help ensure that the information is current and provides a sound basis for policy decisions and reports to other branches of government, criminal justice and mental health partners, and the public. Recommendations also promote innovative and effective practices to foster the fair and efficient processing and resolution of cases involving individuals with mental illness in the criminal justice system.
- *Goal IV, Quality of Justice and Service to the Public:* Recommendations focus on fostering excellence through implementation of evidence-based practices for serving individuals with mental illness in the courts and the criminal justice system. As such, there is a strong emphasis on treatment, supervision, and accountability, which are necessary components of an effective response to individuals' serious and persistent mental health problems and service-related needs. Recommendations throughout the report are designed to support collaborative efforts to improve court practices, to leverage and share resources, and to create tools for improved responses to persons with mental illness in the criminal justice system. The importance of building strong working relationships with communities, law and justice system partners, and state and local leaders is emphasized throughout the report.

Recommendations also focus on creating and maintaining services that are culturally sensitive and foster a better understanding of court programs, procedures, and processes. All of these recommendations are made in the spirit of promoting innovative and effective problem-solving programs and practices that are consistent with the goals of the judicial branch. Recommendations will ultimately not only benefit individuals with mental illness in the criminal justice system, but also their families and communities.

- *Goal V, Education for Branchwide Professional Excellence.* A number of recommendations in this report focus on the expansion of judicial branch education programs, including the development of curricula, to aid courts and their criminal justice and mental health partners in addressing the needs of offenders with mental illness. The education recommendations also support the underlying operational objective of providing judicial officers with relevant and accessible educational and professional development opportunities.

Attachments

1. Recommendation conversion chart, at pages 9–27
2. Chart of comments, at pages 28–279
3. Attachment A: *Task Force for Criminal Justice Collaboration on Mental Health Issues: Final Report*